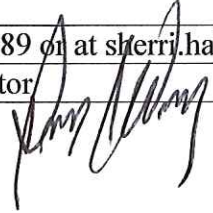


**Division of Children and Family Services
 Protection and Safety Procedure # 27-2015**

Regarding:	Indian Child Welfare Act
Rescinds:	PM#7-2005 – Indian Child Welfare Act AM#01-2009 – Transfer of Indian Child Welfare Cases to Tribal Courts
Date Effective:	09/06/2015
Contact:	Sherri Haber @ 402-471-7989 or at sherri.haber@nebraska.gov
Issue by:	Douglas J. Weinberg, Director



Philosophy:

The Division of Children and Family Services (DCFS) is committed to protecting the essential tribal relations and best interests of an Indian child by promoting practices consistent with the state and federal Indian Child Welfare Act.

Procedure:

Refer to Indian Child Welfare Act (ICWA) Operations Manual for specific procedures in working with Indian children and families.

The attached “Notice to Tribes for Court Cases” will be utilized until the N-FOCUS changes are made effective November 8, 2015.

The attached “Notice to Tribes for Non-Court and Alternative Response Cases” will be utilized until the N-FOCUS changes are made effective November 8, 2015.

The attached “Active Efforts” letter will be utilized for every court hearing until N-FOCUS changes are made effective November 8, 2015.

All “Notices and Active Efforts” documents will be scanned into N-FOCUS document imaging and indexed in the ICWA folder.

References:

Nebraska Revised Statutes 43-1501 to 43-1516

Enclosures:

ICWA Operations Manual
 Tribal Court Notice
 Tribal Non-Court Notice
 Active Efforts Notice
 Cultural Plan

Date:

Address to Tribe(s):

Address to Parent/Indian Custodian:

OR

When Tribe is Unknown:

Aberdeen Area Director
Bureau of Indian Affairs
115 Fourth Avenue, SE
Aberdeen, South Dakota 57401.

A petition has been filed in the _____ County Court for _____ County, Nebraska, alleging that _____ is within the jurisdiction of the Court. This case may be an Indian Child Welfare Act case. The purpose of this letter is to inquire whether this child is a member or may be eligible for membership in your Tribe. If the child is a member or is eligible for membership and the biological child of a member of a federally recognized tribe, the rights contained in the enclosed ICWA Notice apply to these proceedings.

The Nebraska Department of Health and Human Services is committed to compliance with the Federal and Nebraska Indian Child Welfare Acts. Our first step is to identify Indian children, and we do this by consulting with tribes. We provide the enclosed ICWA Notice containing the name, date of birth and place of birth of the child as well as information concerning parents, grandparents and great grandparents so that tribes may identify their children. Additional information about this child's affiliation with your tribe is: **[INSERT NARRATIVE OF ADDITIONAL INFORMATION]**

The ICWA laws provide rights to parents, Indian custodians and tribes. If the child is a member or eligible for membership and the biological child of a member of a federally recognized tribe, the Department of Health and Human Services would like to work with your tribe for this child and family. You may intervene in the proceedings (become a party to the case) and /or request transfer of the case to your tribe's court. We recognize that there are many cases in which a tribe may choose not to intervene and/or request transfer, and, in those cases, it is important the state court knows whether the child is an Indian child. We ask that you complete the enclosed Tribal Response Document and return it to the Department of Health and Human Services in the enclosed prepaid envelope.

Please contact me if you need any additional information to determine if the child is a member or eligible for membership and the biological child of a member of your tribe or if you have any questions.

Sincerely,

_____, CFS Specialist

INDIAN CHILD WELFARE ACT NOTICE – COURT CASE

TO: [NAME OF TRIBE]

Documents have been filed in the _____ County Court in for _____ County, Nebraska, including a Petition alleging that _____ is a child within the jurisdiction of the Court.

The minor child is a member or may be eligible for membership in the above-named tribe, and the Indian Child Welfare Acts, 25 U.S.C. Section 1901, *seq.*, and Neb. Rev. Stat. section 43-1501, *seq.*, may apply to the proceedings.

The child is a member or may be eligible for membership in the following tribes: PLEASE SEE THE CERTIFICATE OF SERVICE.

The following information pertains to the child and the child's ancestry:

Child:

NAME OF CHILD:

BIRTH DATE:

BIRTH PLACE:

LAST KNOWN ADDRESS:

TRIBAL AFFILIATION:

RESIDENCE: **A statement if the child residence or domicile is on the reservation]**TRIBAL COURT INVOLVED: ☐ YES ☐ NO ☐ UNKNOWNIf yes, which Tribal Court: **Father:**

NAME OF PARENT:

BIRTH DATE:

BIRTH PLACE;

PLACE OF DEATH:

OTHER NAMES USED INCLUDING MAIDEN, ALIAS:

CURRENT ADDRESS OF PARENT:

FORMER ADDRESSES OF PARENT:

TRIBAL AFFILIATION:

TRIBAL ENROLLMENT NUMBERS:

PLACE OF DEATH:

Mother:

NAME OF PARENT:

BIRTH DATE:

BIRTH PLACE;

PLACE OF DEATH:

OTHER NAMES USED INCLUDING MAIDEN, ALIAS:

CURRENT ADDRESS OF PARENT:

FORMER ADDRESSES OF PARENT:

TRIBAL AFFILIATION:

TRIBAL ENROLLMENT NUMBERS:

PLACE OF DEATH:

INSERT THE FOLLOWING OF ALL GRANDPARENTS

NAME OF PARENT:

BIRTH DATE:

BIRTH PLACE;

PLACE OF DEATH:

OTHER NAMES USED INCLUDING MAIDEN, ALIAS:

CURRENT ADDRESS OF PARENT:

FORMER ADDRESSES OF PARENT:

TRIBAL AFFILIATION:

TRIBAL ENROLLMENT NUMBERS:

PLACE OF DEATH:

INSERT THE FOLLOWING ON ALL GREAT GRANDPARENTS

NAME OF PARENT:

BIRTH DATE:

BIRTH PLACE;

PLACE OF DEATH:

OTHER NAMES USED INCLUDING MAIDEN, ALIAS:

CURRENT ADDRESS OF PARENT:

FORMER ADDRESSES OF PARENT:

TRIBAL AFFILIATION:

TRIBAL ENROLLMENT NUMBERS:

PLACE OF DEATH:

Indian Custodian(s):

NAME OF PARENT:

BIRTH DATE:

BIRTH PLACE;

PLACE OF DEATH:

OTHER NAMES USED INCLUDING MAIDEN, ALIAS:

CURRENT ADDRESS OF PARENT:

FORMER ADDRESSES OF PARENT:

TRIBAL AFFILIATION:

TRIBAL ENROLLMENT NUMBERS:

PLACE OF DEATH:

If the Indian Child Welfare Acts are found to apply to the proceedings, you have the following rights:

1. No foster care or termination of parental rights proceeding involving the above-named child shall take place until at least ten (10) days after receipt of an ICWA notice.
2. As a parent, Indian custodian or tribe of an Indian child, you have the right to intervene and be made a party to this proceeding.
3. As a parent, Indian custodian, or tribe of an Indian child, you have the right to petition the court to transfer this proceeding to the courts of the tribe, absent objection by either parent and subject to the right of the courts of the child's tribe to decline transfer.

4. Where the court determines indigency, a parent or Indian custodian has the right to have counsel appointed for representation. The Court may, in its discretion, appoint an attorney to represent the child.
5. You have the right, upon request, to be granted up to twenty (20) additional days to prepare for this proceeding.
6. You have the right to examine all reports or other documents filed with the Court upon which any decision with respect to such action may be based.

The following documents are included with this notice: (WORKERS WILL SELECT WHICH DOCUMENTS THEY ARE PROVIDING AND THOSE WILL BE LISTED BELOW)

- ☐ Copy of Petition, dated
- ☐ Copy of Affidavit for Removal, dated
- ☐ Copy of Motion for Temporary Custody dated
- ☐ Copy of Order for Immediate Custody, dated

The location, mailing address and telephone number of the court are:

COURT:
PHYSICAL ADDRESS:
MAILING ADDRESS:
TELEPHONE:

The location, mailing address and telephone number of all parties notified are:
PLEASE SEE THE CERTIFICATE OF SERVICE

An adjudication in this matter may affect the future custodial rights of the parents and/or the Indian custodian(s) of the above-named child and may result in the temporary or permanent removal of the child from his/her home, the termination of parental rights to the child and the permanent placement, guardianship or adoption of the child.

The information contained in this notice is confidential and should not be disclosed or revealed to any person or agency which is not necessary for the exercise of rights under the Indian Child Welfare Acts.

Name of Agency Representative
Division of Children and Family Services

TRIBAL RESPONSE TO INQUIRY

The Tribe responds to the Indian Child Welfare Act Notice as follows:

is:

- ☐ a member of the Tribe.
- ☐ eligible for membership in the Tribe and the biological child of a member.
- ☐ not a member and is not eligible for membership in the Tribe.

Tribe

Signature of person authorized by Tribe

Address

Telephone

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the forgoing Indian Child Welfare Act Notice was service upon the following by United States Mail, Registered Mail, return receipt requested, facsimile or electronic mail on

Parent(s):[LIST NAMES & CURRENT ADDRESS & PHONE]

Indian Custodian(s): [LIST NAMES & CURRENT ADDRESS & PHONE]

Tribe(s): LIST NAMES & CURRENT ADDRESS & PHONE]

County Attorney: LIST NAMES & CURRENT ADDRESS & PHONE]

Guardian ad Litem: LIST NAMES & CURRENT ADDRESS & PHONE]

OR WHEN NO TRIBE IDENTIFIED USE TEXT BELOW.

This notice was also sent by United States Mail, first class postage prepaid, to the Aberdeen Area Director, Bureau of Indian Affairs, 115 Fourth Avenue, SE, Aberdeen, South Dakota 57401.

Name of Agency Representative
Division of Children and Family Services

Date:

Address to Parents/Indian custodian:

Address to Tribe(s):

OR

When Tribe is Unknown:

Aberdeen Area Director
Bureau of Indian Affairs
115 Fourth Avenue, SE
Aberdeen, South Dakota 57401.

The Division of Children and Family Services (DCFS) is currently working with _____ in a non-court case. _____ was brought to the attention of DCFS because of a report of concern related to alleged child abuse and neglect. This case may be an Indian Child Welfare Act case. The purpose of this letter is to inquire whether this child is a member or may be eligible for membership in your Tribe. If the child is a member or is eligible for membership and the biological child of a member of a federally recognized tribe, the rights contained in the enclosed ICWA Notice apply to these voluntary services.

The Nebraska Department of Health and Human Services is committed to compliance with the Federal and Nebraska Indian Child Welfare Acts. Our first step is to identify Indian children, and we do this by consulting with tribes. We provide the enclosed ICWA Notice containing the name, date of birth and place of birth of the child as well as information concerning parents, grandparents and great grandparents so that tribes may identify their children. **[[Additional information about this child's affiliation with your tribe is:**

The ICWA laws provide rights to parents, Indian custodians and tribes. If the child is a member or eligible for membership and the biological child of a member of a federally recognized tribe, the Department of Health and Human Services would like to work with your tribe for this child and family. We would like to hear from you to see if you would like to be involved in providing support to the child and family. We recognize that there are many cases in which a tribe may choose not to become involved. In those cases, it is important DCFS knows whether the child is an Indian child. We ask that you complete the enclosed Tribal Response Document and return it to the Department of Health and Human Services in the enclosed prepaid envelope.

Please contact me if you need any additional information to determine if the child is a member or eligible for membership and the biological child of a member of a federally recognized tribe or if you have any questions.

Sincerely,

CFS Specialist

INDIAN CHILD WELFARE ACT NOTICE for NON-COURT CASE

TO: [NAME OF TRIBE]

The Division of Children and Family Services (DCFS) of the Nebraska Department of Health and Human Services has determined that an ongoing non-court involved or alternative response case needs to be opened regarding [NAME OF CHILD] because of identified safety and/or risk issues.

If the minor child is a member or may be eligible for membership in the above-named tribe, and the Indian Child Welfare Acts, 25 U.S.C. Section 1901, *seq.*, and Neb. Rev. Stat. section 43-1501, *seq.*, may apply to the proceedings.

The following information pertains to the child and the child's ancestry:

Child:

[NAME OF CHILD]

[CHILD'S BIRTH DATE]

[CHILD'S BIRTH PLACE]

[LAST KNOWN ADDRESS OF THE CHILD]

[TRIBAL AFFILIATION]

[RESIDENCE- A statement if the child residence or domicile is on the reservation]

TRIBAL COURT INVOLVED: ☐ YES ☐ NO ☐ UNKNOWNIf yes, which Tribal Court: **Father:**

[NAME OF PARENT]

[BIRTH DATE]

[BIRTH PLACE]

[PLACE OF DEATH]

[OTHER NAMES USED INCLUDING MAIDEN, ALIAS]

[CURRENT ADDRESS OF PARENT]

[FORMER ADDRESSES OF PARENT]

[TRIBAL AFFILIATION]

[TRIBAL ENROLLMENT NUMBERS]

Mother:

[NAME OF PARENT]

[OTHER NAMES USED INCLUDING MAIDEN, ALIAS]

[CURRENT ADDRESS OF PARENT]

[FORMER ADDRESSES OF PARENT]

[TRIBAL AFFILIATION]

[TRIBAL ENROLLMENT NUMBERS]

[BIRTH DATE]

[BIRTH PLACE]

[PLACE OF DEATH]

INSERT THE FOLLOWING INFORMATION ON ALL MATERNAL AND PATERNAL GRANDPARENTS

[NAME OF GRANDPARENT]

[BIRTH DATE]

[BIRTH PLACE]

[PLACE OF DEATH]
[CURRENT ADDRESS OF GRANDPARENT]
[FORMER ADDRESSES]
[OTHER NAMES USED INCLUDING MAIDEN, ALIAS]
[TRIBAL AFFILIATION]
[TRIBAL ENROLLMENT NUMBERS]

INSERT THE FOLLOWING INFORMATION ON ALL MATERNAL AND PATERNAL GREAT GRANDPARENTS

[NAME OF GREAT GRANDPARENT]
[BIRTH DATE]
[BIRTH PLACE]
[PLACE OF DEATH]
[CURRENT ADDRESS OF GREAT GRANDPARENT]
[FORMER ADDRESSES]
[OTHER NAMES USED INCLUDING MAIDEN, ALIAS]
[TRIBAL AFFILIATION]
[TRIBAL ENROLLMENT NUMBERS]

Indian Custodian(s):

[NAME]
[BIRTH DATE]
[BIRTH PLACE]
[PLACE OF DEATH]
[OTHER NAMES USED INCLUDING MAIDEN, ALIAS]
[CURRENT ADDRESS]
[FORMER ADDRESSES]
[TRIBAL AFFILIATION]
[TRIBAL ENROLLMENT NUMBERS]

If it is determined that the child is a member or eligible for membership in your tribe, you have the right to participate in, provide, or consult with the Department regarding the provision of voluntary services.

The information contained in this notice is confidential and should not be disclosed or revealed to any person or agency which is not necessary for the exercise of rights under the Indian Child Welfare Acts.

Name of Agency Representative
Division of Children and Family Services

TRIBAL RESPONSE TO INQUIRY

The [INSERT NAME OF TRIBE] responds to the Indian Child Welfare Act Notice as follows:

[NAME OF CHILD] is:

- ☐ a member of the Tribe.
- ☐ eligible for membership in the Tribe and the biological child of a member.
- ☐ not a member and is not eligible for membership in the Tribe.

[INSERT NAME OF TRIBE]

Signature of person authorized by Tribe

Address

Telephone

DATE:

ADDRESS to COURT

RE: Active Efforts for [NAME OF CHILD(REN)]

Dear Judge,

As required by Neb. Rev. Statute 43-1503(h), this letter serves to provide you with a description of active efforts provided and attempts made to provide active efforts to the above named children by the Division of Children and Family Services since the last active efforts information was shared with the Court.

[Describe ACTIVE EFFORTS made since the last report to the court]

Sincerely,

[NAME OF WORKER]
CFS Specialist

**NATIVE AMERICAN CULTURAL PLAN
Foster Care/Adoptive Placement**

Name of Child:

Birthdate of child:

Name of child's tribe(s) and address(s):

Determination for ICWA Applicability

Child's enrollment/registration number and any other indication of membership or eligibility for membership in a tribe (i.e. Certificate of Degree of Indian Blood, Indian Health Services card, testimony of tribal elder, etc.). Include any information on tribal heritage.

Membership eligibility of parent(s) and enrollment number(s) and any other indication of membership or eligibility for membership in a tribe:

Prior to notification and/or response from the tribe, do you have a reasonable belief that ICWA will apply? YES ☐ NO ☐ Reason if NO:

Notification sent (registered mail, return receipt requested) to the tribe:

YES ☐ Date sent: Return Receipt Date: Return Receipt signed by:

NO ☐ Reason if NO:

Did the Tribe request to intervene in the court case? YES ☐ NO ☐

If YES, what date?

Has a determination been made for intervention? YES ☐ NO ☐

If YES, what date?

What was the determination (provide an explanation if not allowed to intervene):

Describe the Tribe's views concerning foster care placement, pre-adoptive or adoptive placement:

Name and address of person or agency through whom foster care or adoptive placement was arranged:

Name and address of tribal Indian Child Welfare Worker:

Name and address of local Native American Association or Center:

Name of Foster/Adoptive Family:

Foster Parents, how will you:

1. Share information with the child about his/her biological family?
2. Maintain contact with the tribe(s)? (This must include more than attendance at pow-wows.)
3. Maintain contact with the child's extended family and siblings: Visitation plans:
4. Learn about the child's cultural history, traditions and values? (This must include more than internet- and book-based teaching.)
5. Integrate the child's cultural traditions with that of your family's culture? Include any plans on learning or helping the child learn their tribal language(s).
6. Ensure cultural traditions will be a part of your way of life (rather than a one time event)?
7. Teach the child his or her cultural history, traditions and values through the different stages of the child's development? (This must include more than internet- or book-based teaching.)
8. Help the child develop a healthy cultural identity throughout their life?
9. Prepare the child to appropriately deal with any cultural biases or bullying they may experience?
10. Learn how cultural preconceptions have affected your family, the community and the child's school? Include how you will handle "Split Feather Syndrome".

NATIVE AMERICAN CULTURAL PLAN
AGREEMENT/SIGNATURES

Foster or
Adoptive Parent(s): _____ Date: _____
_____ Date: _____

Child: _____ Date: _____

CFS Specialist: _____ Date: _____

Tribal ICWA Worker: _____ Date: _____

INDIAN CHILD WELFARE ACT (ICWA)
OPERATIONS MANUAL
Division of Children and Family Services

INDIAN CHILD WELFARE ACT (ICWA) OPERATIONS MANUAL

The Indian Child Welfare Act (ICWA) is a federal law that was passed in 1978. ICWA was passed to protect Indian families and preserve the ties between Indian children and their tribes. Congress found that “an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by non-tribal public and private agencies and that an alarming percentage of such children are placed in non-Indian foster and adoptive homes and institutions.” Congress sought to protect the connections between Indian children and their cultures and stated that ICWA is in the best interest of Indian children.

To enhance compliance with the federal ICWA, the Nebraska Legislature enacted the Nebraska ICWA in 1985. All ICWA cases must comply with the federal law and both the federal ICWA and the Nebraska ICWA provide that the law that provides the higher standard of protection applies. If there seems to be a conflict between a state law and the Federal ICWA, then the Federal ICWA must be applied and followed.

GLOSSARY

Active efforts means and includes, but is not limited to:

1. A concerted level of casework, both prior to and after the removal of an Indian child, exceeding the level that is required under reasonable efforts to preserve and reunify the family described in section 43-283.01 in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe or tribes to the extent possible under the circumstances;
2. A request to the Indian child's tribe or tribes and extended family known to the department or the state to convene traditional and customary support and services;
3. Actively engaging, assisting, and monitoring the family's access to and progress in culturally appropriate and available resources of the Indian child's extended family members, tribal service area, Indian tribe or tribes, and individual Indian caregivers;
4. Identification of and provision of information to the Indian child's extended family members known to the department or the state concerning appropriate community, state, and federal resources that may be able to offer housing, financial, and transportation assistance and actively assisting the family in accessing such community, state, and federal resources;
5. Identification of and attempts to engage tribally designated Nebraska Indian Child Welfare Act representatives;
6. Consultation with extended family members known to the department or the state, or a tribally designated Nebraska Indian Child Welfare Act representative if an extended family member cannot be located, to identify family or tribal support services that could be provided by extended family members or other tribal members if extended family members cannot be located; and
7. Exhaustion of all available tribally appropriate family preservation alternatives.

Adoptive placement see child custody proceeding.

Best Interest of the Indian child includes:

1. Practices are in compliance with the federal Indian Child Welfare Act, the Nebraska Indian Child Welfare Act, and other applicable laws that are designed to prevent the Indian child's voluntary or involuntary out-of-home placement, and
2. Placing the child in a foster home, adoptive placement or other type of custodial placement that reflects the unique values of the Indian child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe or tribes and tribal community when an out-of-home placement is necessary.

Child custody proceeding means and includes:

1. "Foster care placement" means any action removing an Indian child from its parent or Indian custodian for temporary or emergency placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
2. "Termination of parental rights" means any action resulting in the termination of the parent-child relationship;
3. "Preadoptive placement" means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement;
4. "Adoptive placement" means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption; and
5. "Voluntary foster care placement" means a non-court-involved proceeding in which the department or the state is facilitating a voluntary foster care placement or in-home services to families at risk of entering the foster care system. This includes cases that are identified as non-court involved and Alternative Response. An Indian child, parent, or tribe involved in a voluntary foster care placement shall only be provided protections as provided in Neb. Rev. Statute 43-1505(4) and sections 43-1506 and 43-1508.

Cultural Plan is a written plan to ensure a life-long process of encouraging and fostering the Indian child's awareness and understanding of their Native American and tribal heritage and the development of a positive cultural identity. Key components of this plan include, but are not limited to, educating the child about his/her tribal history; initiating and maintaining connections and contact with extended family and other tribal members; exposing the child to positive Native American role models, literature, music, and art; recognizing and addressing racism at the child's current age and in the future, planning for the child to be a part of tribal events and ceremonies, etc.

Department or State means the applicable state social services entity that is involved with the provision of services to the Indian children, specifically the Department of Health and Human Services and its contracted agencies and the Office of Probation Administration.

Domicile is the child's legal residence as defined by federal law. The domicile of a child follows that of the parent or legal guardian, even if the child has never been to that place.

INDIAN CHILD WELFARE ACT (ICWA) OPERATIONS MANUAL

Eligible for membership means that an individual has been determined *by the tribe* that they are eligible to be a member of the tribe and can take the appropriate action to become a member and have access to any benefits provided to Indians by the United States government.

Emergency means imminent physical damage or harm to an Indian child is likely to occur (necessitating immediate removal of an Indian child). If an emergency does not exist, an Indian child cannot be removed until after a court hearing in which a qualified expert witness testifies.

Enrollment is the formal written process of becoming listed on the tribe's register or rolls. This term is used interchangeably with registration, but it *may or may not be the same as membership*, depending upon the tribe's definitions of these terms. It is not necessary to be enrolled or registered in a tribe to be a member, but all persons who are enrolled or registered are members. Some tribes do not have enrollment, registration or rolls.

Expert Witness See qualified expert witness.

Extended family member is defined by the law or custom of the Indian child's primary tribe or, in the absence of such laws or customs of the primary tribe, the law or custom of the Indian child's other tribes or, in the absence of such law or custom, a person who has reached the age of 18 and who is the Indian child's parent, grandparent, aunt or uncle, clan member, band member, sibling, brother-in-law or sister-in-law, niece or nephew, cousin, or step-parent.

Federal Indian Child Welfare Act means the federal Indian Child Welfare Act of 1978, 25 U.S.C. 1901 et seq.

Federally recognized Indian tribe is any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. section 1602(c).

Foster care placement. See child custody proceeding.

Indian means any person who is a member of an Indian tribe, or who is an Alaska Native and member of a regional corporation defined in section 7 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1606.

Indian child means any unmarried person who is under age 18 and is either (1) a member of an Indian tribe or (2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. *The parent and child do not have to be members of or eligible for membership in the same federally recognized tribe for the ICWA to apply.* For example, the child may be eligible for membership in the Ponca Tribe, and the child's parent may be a member of the Omaha Tribe.

Indian child's primary tribe may be established in the case of an Indian child that is a member or eligible for membership in multiple tribes. If the Indian child is eligible for membership or enrolled in multiple Indian tribes and more than one Indian tribe intervenes in a state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian child's primary tribe shall be determined in the following manner:

1. The applicable Indian tribes shall enter into a unanimous agreement designating which Indian tribe is the Indian child's primary tribe for the underlying state court proceeding within thirty days after intervention by one or more additional Indian tribes, after consultation, if practicable, with the parents of the Indian child and with the Indian child if he or she is twelve years of age or older; or
2. If unanimous agreement is not possible within the thirty-day period, the state court in which the proceeding is pending shall determine the Indian child's primary tribe based upon the amount and significance of the contacts between each Indian tribe and the Indian child.

Indian child's tribe means the Indian tribe or tribes in which an Indian child is a member or eligible for membership.

Indian custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of the child.

Indian organization means any group, association, partnership, limited liability company, corporation, or other legal entity owned or controlled by Indians or a majority of whose members are Indians.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians including any Alaska Native village as defined in 43 U.S.C. 1602 (c).

Membership is a tribal standard with tribal criteria. Membership in a tribe signifies that the person is eligible for access to benefits provided to Indians by the United States Government, including the protections of the ICWA. Membership is not always interchangeable with enrollment or registration, and it is not necessary to be enrolled or registered to be a member of a tribe, depending upon tribal criteria. A tribal determination of membership is conclusive as to that tribe at that point in time.

Notice is providing a person or entity (e.g. tribe) with information that a case has been filed or a proceeding is scheduled. For ICWA purposes, the content of the notice must contain the information specified in the Code of Federal Regulations.

Parent means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or

custom. It does not include the unwed father when paternity has not been acknowledged or established.

Primary Tribe means the tribe that is determined by the procedures described in N.R.S. 43-1504 (4) if an Indian child is a member or eligible for membership in multiple tribes. See Indian child's primary tribe definition.

Placement preferences are those preferences identified in Neb. Rev. Statute 43-1508. Tribes may establish a different order of placement preferences, which should be followed. Otherwise, any child accepted for foster care or preadoptive placement or a voluntary foster care placement shall be placed in the least restrictive setting which most approximates a family and in which his or her special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child.

In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with one of the following *in descending priority order*:

1. A member of the Indian child's extended family;
2. Other members of the Indian child's tribe or tribes;
3. A foster home licensed, approved, or specified by the Indian child's tribe or tribes;
4. An Indian foster home licensed or approved by an authorized non-Indian licensing authority;
5. A non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child's tribe or tribes;
6. An Indian facility or program for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs; or
7. A non-Indian facility or program for children approved by an Indian tribe.

In any adoptive placement of an Indian child under state law, a preference shall be given, in the absence of good cause to the contrary, to a placement with the following *in descending priority order*:

1. A member of the Indian child's extended family;
2. Other members of the Indian child's tribe or tribes; or
3. Other Indian families; or
4. A non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child's tribe or tribes;

Pre-adoptive placement see child custody proceeding.

Qualified Expert Witness is a person who is qualified to speak specifically to the issue of whether continued custody by the parents or Indian custodians is likely to result in serious physical or emotional damage to the child. Qualified expert witness shall mean

one of the following persons, *in descending priority order* although a court may assess the credibility of individual witnesses:

1. A member of the Indian child's tribe or tribes who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family and childrearing practices;
2. A member of another tribe who is recognized to be a qualified expert witness by the Indian child's tribe or tribes based on his or her knowledge of the delivery of child and family services to Indians and the Indian child's tribe or tribes;
3. A lay expert witness that possesses substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe or tribes;
4. A professional person having substantial education and experience in the area of his or her specialty who can demonstrate knowledge of the prevailing social and cultural standards and childrearing practices within the Indian child's tribe or tribes; or
5. Any other professional person having substantial education in the area of his or her specialty.

Registered or Registration. See enrollment.

Reservation means Indian country as defined in the United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation or a federally designated or established service area which means a geographic area designated by the United State where federal services and benefits furnished to Indians and Indian tribes are provided or which is otherwise designated to constitute an area on or near a reservation.

Secretary means the Secretary of the United States Department of the Interior.

Termination of parental rights See child custody proceeding.

Tribal court means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. Many tribes, including all four Nebraska tribes, operate tribal courts, and tribal court orders must be given full faith and credit.

Tribal ICWA Specialist is a staff person employed by a tribe who is responsible for case management of ICWA cases. This person may also be responsible to represent the tribe's legal interests in ICWA cases and is allowed to fully participate in court proceedings even if they are not a licensed attorney. Tribes may also designate other persons to represent their interests, as needed.

Tribal Service Area means a geographic area, as defined by the applicable Indian tribe or tribes, in which tribal services and programs are provided to Indians. For example, the

Ponca Tribe of Nebraska does not have a reservation and has a service area which includes twelve counties in Nebraska, two counties in Iowa and one county in South Dakota.

JURISDICTION

If an Indian child is a resident of or domiciled on a reservation or if the child is a ward of a tribal court, the tribe has exclusive jurisdiction over the child. Law Enforcement or a court order may remove a child in an emergency if the child is located off of the reservations. Immediately following the removal DHHS must notify the child's tribe.

IDENTIFYING INDIAN CHILDREN

At the time of the report to the Hotline, the CFS Intake Specialist will inquire as to whether the reporter has any reason to believe one of the parties involved may be an Indian child or Indian person. The information will be documented in the Intake. When the CFS Intake Specialist has any reason to believe that an Indian child or Indian person is involved in an Intake Accepted for Assessment the information will be clearly documented in the Intake assigned to the local office for the Initial Assessment Supervisor to review prior to assigning the case to a specific CFS Specialist. The CFS Intake Specialist will notify their supervisor when an Indian child or person is identified.

In every investigation, non-court, court and alternative response case, the CFS Specialist must ask if the child is or may be an Indian child. CFS Specialists are required to inquire into tribal affiliations throughout the life of the case. The CFS Specialist will follow ICWA requirements until it is determined that the child is not a member or eligible for membership in an Indian tribe.

When there is reason to believe the child is an Indian child as defined by law, the CFS Specialist must take action to determine the child's tribe(s). The CFS Specialist must ask the child's parent or custodian, if the child or family is affiliated with or members of any tribes. If age appropriate, the worker may also ask the child. The CFS Specialist will make all attempts to gather sufficient information to identify the child's tribe(s) including, but not limited to:

1. Contact relatives and extended family members;
2. Contact the schools, child care facilities or others known to the family; or
3. Contact the tribe(s) that the child may have a connection to.

When no additional information is obtained and there is continued reason to believe the child is an Indian child as defined by law, the CFS Specialist should contact the Aberdeen Area Director, Bureau of Indian Affairs, 115 Fourth Avenue, SE, Aberdeen, South Dakota 57401.

In all court cases where a petition alleges the juvenile to be within Neb. Rev. Statute 43-247 (3)(a), the court will inquire as to whether any party believes an Indian child is involved in the proceeding. This action does not take the place of the CFS Specialist's initial and ongoing inquiry of this information with the family.

INITIAL ASSESSMENT AND ONGOING CASE MANAGEMENT

The CFS Specialist will conduct assessments and prepare case plans as described in NAC 390, NAC 395, Administrative Memos, Program Guidance Handbook, and Alternative Response Program Guidance.

1. The CFS Specialist must involve the tribe at the earliest reasonable point of intervention, but no later than five (5) days after a non-court or alternative response case is opened for ongoing services or as soon as possible when the child is removed from the home and placed in out-of-home care. This will be done by sending Notice to the Tribe(s) and by calling the tribes' ICWA Specialist.
2. In utilizing all of the SDM tools, in family team meetings and in all other case management activities the CFS Specialist must gather information regarding family member's tribal affiliations and traditional child rearing practices.
3. Case Plan and Cultural Plan
 - a. The CFS Specialist will include the tribal ICWA Specialist or other designated tribal representatives in family team meetings and other meetings held to discuss the case plan, progress and case status, arranging phone or video conferencing when necessary to facilitate their participation.
 - b. The CFS Specialist will use tribal social services whenever possible when working with Indian parents and children. The CFS Specialist must involve the tribal ICWA Specialist in case planning and service provision whenever practical so that case planning and service provision are based on the social and cultural standards of the tribe. The CFS Specialist will provide the tribal ICWA Specialist or other designated tribal representative access to the children at reasonable times for visitation, assessment and case planning.
 - c. The CFS Specialist must develop a cultural plan for any Indian child who is placed in a home that is non-Indian or a home that is affiliated with a tribe that is not the child's tribe. The CFS Specialist will use the Cultural Plan template (attached) and scan into N-FOCUS when finalized and indexed in the Case Plan folder. The Cultural Plan should be attached to the Case Plan and Court Report. The cultural plan must contain strategies to:
 - i. educate the child about his/her tribal history;
 - ii. initiate and maintain contact with extended family and other tribal members;
 - iii. expose the child to positive Native American role models, literature, music and art;
 - iv. recognize and address racism at the child's current age and in the future;
 - v. plan for the child to be a part of tribal events and ceremonies, etc.

The CFS Specialist will work with the tribe's ICWA Specialist or other designated representative, the foster family, the parent/custodian, extended family members and the child (if appropriate) in the development of the cultural plan. The Cultural Plan should be developed in conjunction with the case plan and be reviewed and updated annually and as needed.

ICWA DETERMINATION

1. The Indian Child Welfare Act does not cover all children who identify themselves as Indian or whose family identifies the child as Indian. For a child to be considered an Indian child under ICWA, the child must be:
 - a. An unmarried person under the age of eighteen; and
 - b. A person who is either a member of an Indian tribe or eligible for membership and the biological child of a member of an Indian tribe.
2. ICWA applies whenever an Indian child is the subject of a DCFS custody proceeding or when status offense or juvenile delinquency cases result in the need for out-of-home placement in foster care, preadoptive or adoptive placement.
3. ICWA requirements should be followed in all cases (court, non-court and alternative response) in which the CFS Specialist knows or has reason to believe that an Indian child is involved until it is determined that the case does not involve an Indian Child.

CONTACTING TRIBES

Upon identification of a tribe, the CFS Specialist will contact the tribe(s) child welfare unit, enrollment office, or the designated tribal service agency for ICWA notice, an appropriate Indian social service organization, or the Bureau of Indian Affairs. A directory of these agents can be found at www.bia.gov. Select the Tribal Directory to locate the Federal Register. For the tribe(s) without a designated tribal agent for service of ICWA notice, contact the tribe(s) to be directed to the appropriate individual or office.

INDIAN CUSTODIAN

An Indian custodian can be related or unrelated to the Indian child. The Indian Custodian can be an Indian person who:

1. has custody or guardianship through a state court or a tribal court;
2. has cared for the child on a long term basis at the request of the parent; or
3. is babysitting at the request of a parent.

An Indian custodian has the same rights as a parent under the ICWAs. The CFS Specialist will work with the Indian custodian just as they would a biological parent.

PATERNITY

Neb. Rev. Stat. 43-104.01 provides a method of legally acknowledging paternity for purposes related to adoption. Neb. Rev. Stat. 43-1406 identifies that paternity can be established by judicial order, by a prior determination of paternity made by any other state or by an Indian tribe. When a CFS Specialist is informed that an Indian Tribe has established paternity, the CFS Specialist will contact DHHS Legal.

NOTICE REQUIREMENTS

The CFS Specialist will send an ICWA Notice utilizing the form available on N-FOCUS. The Notice will be sent by registered mail with return receipt requested. Notice will be sent to the parent(s), the Indian custodian, and the Indian child's tribe or tribes. If the CFS Specialist does not have accurate contact information for the tribe(s) or the tribe(s) failed to respond to written inquiries, the CFS Specialist may seek assistance in contacting the Indian tribe(s) from the Bureau of Indian Affairs Regional Office at:

Aberdeen Area Director, Bureau of Indian Affairs, and 115 Fourth Avenue, SE, Aberdeen, South Dakota 57401.

1. Voluntary Custody: Voluntary custody cases are those that are Non-Court Involved or Alternative Response cases. When DCFS opens a Non-Court or Alternative Response case and knows or has reason to know that an Indian child is involved, the CFS Specialist will notify the parent or Indian custodian and the Indian child's tribe or tribes, by telephone, facsimile, email or registered mail with return receipt requested of the provision of services and any pending child custody proceeding. The CFS Specialist will send notice within five (5) days after the decision is made to open a Non-Court or Alternative Response case.

If the identity or location of the parent or Indian custodian and the tribe or tribes cannot be determined, such notice will be given to the secretary and the appropriate area director. (Refer to the Involuntary Custody Program Guidance). The CFS Specialist will work with the custodial parent or Indian Custodian to discuss whether the non-custodial parent should be notified and whether the non-custodial parent could provide resources or support.

2. Involuntary Custody: In any involuntary custody (Court Involved) proceeding concerning an Indian child, the CFS Specialist must send notice of the proceeding to the following:
 - a. The parents (regardless of whether the parent is Indian or non-Indian, and regardless of whether the parent is named or not named on the petition);
 - b. Indian custodians; and
 - c. To the tribe or tribes that are federally recognized in which the child may be a member or eligible for membership.

Notices must be sent by registered mail with a return receipt requested. The CFS Specialist will send notice even if notice is also sent by the Court.

Notices and the return receipts must be filed with the court and a copy must be kept in CFS file. These documents may be scanned and placed in the ICWA category on N-FOCUS document imaging and the originals can be destroyed.

No foster care placement or termination of parental rights proceedings may be held until at least ten (10) days after receipt of the notice by the parent or Indian custodian and the tribe or tribes or the secretary. The parent or Indian custodian or the tribe or tribes shall, upon request, be granted up to twenty (20) days to prepare for the proceeding.

It is possible for an Indian child to have both biological and customary adoptive parents and Indian custodians, all of whom have parental rights. The CFS Specialist must enter all known parents and Indian custodians into NFOCUS in the CFS case and inform the court or county attorney of any person who is identified as a biological or adoptive parent or Indian custodian.

The notice must be written in clear and understandable language. The CFS Specialist will create the Tribal Notice in N-FOCUS. The notice template on N-FOCUS will include the following information:

1. The name of the Indian child, the child's birth-date and birthplace, the names of the child's biological parents, maternal and paternal grandparents and great-grandparents and Indian custodians along with all known former names, aliases, addresses, dates and places of birth and death and any tribal affiliations with enrollment numbers if any and other identifying information;
2. The child's tribal affiliation;
3. A copy of the petition, complaint or other document by which the proceeding was initiated;
4. The name of the petitioner;
5. The name and address of the petitioner's attorney;
6. A statement of the right of the biological parents, Indian custodians and the child's tribe to intervene in the proceeding; Indian custodian is an Indian person who has legal custody of an Indian child under tribal law or custom or state law or to whom temporary custody and control of the child has been transferred by the parent. If the custodian of the child is non-Indian, these protections do not apply.
7. A statement that if the parents or Indian custodians are unable to afford counsel, and where a state court determines indigence, counsel will be appointed to represent them;
8. The location, mailing address and telephone number of the court and all parties notified;
9. A statement of the right of the parents or Indian custodians and the child's tribe to have, on request, 20 days (or such additional time as may be permitted under state law) to prepare for the proceedings;
10. A statement of the right of the parents or Indian custodians or the child's tribe to petition the court to transfer the proceedings to the child's tribe, absent objection by either parent and subject to the right of the child's tribe's tribal court to decline transfer;
11. The potential legal consequences of an adjudication on future custodial and parental rights of the parents or Indian custodians; and
12. A statement in the notice to the tribe that tribal officials must keep confidential the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's right under the ICWA.

The original or a copy of each notice sent under this section must be filed with the court together with any return receipts or other proof of service. Copies must be maintained in the Department file. These copies may be scanned into document imaging and filed in the ICWA category.

RELEASING INFORMATION

The CFS Specialist may only release public information to the Tribe(s) unless the tribe intervenes or the tribe is actively working and involved in the case.

1. When the CFS Specialists suspects the child(ren) may be Indian, the statutory requirement to send notice needs to be followed.
2. When it is determined that ICWA applies, the CFS Specialist can share court orders, but cannot share case plans or court reports until the tribe intervenes, is actively working and involved in the case or requests additional information to help them determine whether to intervene. When the tribe is not requesting information to make decisions or is not involved in the case, confidential information and the Case Plans and Court Reports will not be shared.
3. When a tribe intervenes, they become a party to the case and can have all information, including the case plan and court report.
4. When a tribe has not intervened, but is actively working and involved in the case, information can be shared, including the case plan and court report, when it would be in furtherance of the child protection act.

DETERMINING TRIBAL MEMBERSHIP

A tribe's determination that a child is a member or eligible for membership is conclusive. If a tribe does not respond to notice or inquiries as to membership the CFS Specialist must call the tribe to inquire whether the child is a member or eligible for membership. CFS Specialist must document all contacts and responses from the tribe regarding inquiries as to membership in the Multi-Person Narrative in the Indian Child Welfare Act Item Area of the Kinship Narrative. If the tribe cannot determine eligibility or fails to respond after the ICWA notice and the CFS Specialist's follow up phone call(s), the CFS Specialist:

1. will contact the county attorney or DHHS Legal to schedule a court hearing in which all other parties in the case should present evidence to allow the state court to determine the status of the child in any court case. Evidence of membership may include documentation of enrollment or registration in a tribe, a Certificate of Degree of Indian Blood, an Indian Health Services' card, testimony of tribal authorities or elders, or any other evidence that would tend to prove that a child is an Indian child.
2. Will continue attempts to contact the tribe monthly until the case is closed or is transferred to a court case.

It is possible for a child to be eligible for membership in more than one tribe. Tribes may determine membership through any of the following:

1. Lineage (the child may be a descendant);
2. Enrollment;
3. Blood quantum;
4. Birth on a reservation; or
5. Any other standard or process of the tribe.

The CFS Specialist will send notice for each and every child the CFS Specialist knows or has reason to believe is Indian. The CFS Specialist will send ICWA notices for any children born after a tribe has determined that siblings are eligible or ineligible for

membership, as the tribe needs to make the determination of eligibility on each child individually.

ENROLLMENT IN A TRIBE

Enrollment is not always required in order to be a member of a tribe. Some tribes do not have written rolls. Others have rolls that list only persons that were members as of a certain date. Blood quantum is also not a determining factor. Whenever possible, tribes must make the decision of the child's status. The CFS Specialist must ask the tribe if the child is a member or eligible for membership and the biological child of a member.

When enrollment is necessary to become a member of the tribe, the CFS Specialist will take action to work with the family to ensure that all paperwork and supporting documentation is completed and submitted to the tribe.

All documentation will be scanned into N-FOCUS document imaging in the ICWA category. Any official enrollment documents will be scanned and stored in the hard copy file. When the CFS case is closed the original documents will be given to the child and the parents.

If assistance is needed in determining whether or not a child is a member or eligible for membership with a tribe, the worker may contact DCFS ICWA Program Specialist.

PRIMARY TRIBE DETERMINATION

If the Indian child is eligible for membership or a member of multiple Indian tribes and more than one Indian tribe intervenes in a state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian child's primary tribe shall be determined in the following manner:

1. The applicable Indian tribes shall enter into a unanimous agreement designating which Indian tribe is the Indian child's primary tribe for the underlying state court proceeding within thirty days after intervention by one or more additional Indian tribes, after consultation, if practicable, with the parents of the Indian child and with the Indian child if he or she is twelve years of age or older; or
2. If unanimous agreement is not possible within the thirty-day period, the court in which the proceeding is pending shall determine the Indian child's primary tribe based upon the amount and significance of the contacts between each Indian tribe and the Indian child.

ACTIVE EFFORTS

ICWA establishes a minimum standard for preventing the breakup of the family, removal of an Indian child from their home and guidelines for placement in foster or adoptive homes. Active efforts must be made to keep the Indian family together. Active efforts means that everything possible must be done to help the family resolve the problems that led to neglect or abuse, including referral to services that are sensitive to the family's culture. The CFS Specialist must involve and use the available resources of the extended family, the tribe, Indian social service agencies and individual Indian caregivers.

The CFS Specialist will provide active efforts to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family. The CFS Specialist must consider services available through tribal social services, Native American service providers, and service providers with appropriate cultural components, experience or knowledge as well as individual Indian caregivers (traditional healers, spiritual leaders, etc.) and extended family members.

The CFS Specialist will provide Active efforts as described below. This list is not exhaustive and the CFS Specialist can and should take any action necessary to prevent removal and to help the family resolve the problems that led to the alleged abuse or neglect.

1. Collaborative casework that includes the family and the tribe(s), both prior to and after the removal of an Indian child, exceeding the level that is required under reasonable efforts to preserve and reunify the family that is consistent with the current social and cultural conditions and way of life of the Indian child's tribe or tribes to the extent possible under the circumstances;
2. A request to the Indian child's tribe or tribes and extended family known to DCFS to convene traditional and customary support and services;
3. Actively engaging, assisting, and monitoring the family's access to and progress in culturally appropriate and available resources of the Indian child's extended family members, tribal service area, Indian tribe or tribes, and individual Indian caregivers;
4. Identification of and provision of information to the Indian child's extended family members concerning appropriate community, state, and federal resources that may be able to offer housing, financial, and transportation assistance and actively assisting the family in accessing such community, state, and federal resources;
5. Identification of and attempts to engage tribally designated Nebraska Indian Child Welfare Act representatives;
6. Consultation with extended family members or a tribally designated Nebraska Indian Child Welfare Act representative if an extended family member cannot be located, to identify family or tribal support services that could be provided by extended family members or other tribal members if extended family members cannot be located; and
7. Exhaustion of all available tribally appropriate family preservation alternatives.

At every court hearing involving an ICWA child, the CFS Specialist will provide a written report of DCFS attempts to provide or provision of active efforts based on N.R.S. 43-1503. This report will be sent to the Indian child's tribe or tribes within three days after being filed with the court regardless of the decision of the tribe to intervene or efforts made to be involved in the case. The CFS Specialist may contact the DCFS ICWA Program Specialist to consult on the provision of Active Efforts.

When the Court or Court Order does not find that active efforts have been made, the CFS Specialist and CFS Supervisor will contact the DCFS ICWA Program Specialist for consultation.

BEST INTEREST

The CFS Specialist will ensure that best interest of the Indian child are met by following the laws of ICWA. The CFS Specialist will take steps to ensure that all actions to prevent the Indian child from becoming involved with CFS are taken and if an out-of-home placement is needed to ensure child safety all steps will be taken to locate a foster placement that meets the placement preferences of the Indian child's tribe or tribes and reflects the unique values of the Indian child's tribal culture. See Best Interest definition.

PLACEMENT PREFERENCES IN OUT- OF- HOME- CARE

Placement preferences apply to all placement changes of an Indian child within the definition of child custody proceedings.

1. Adoption: The CFS Specialist will follow the placement preferences described for placement of an Indian child in an adoptive home, unless good cause has been established. Placement preferences for an adoptive placement will be followed in descending priority order:
 - a. A member of the Indian child's extended family regardless of heritage;
 - b. Other members of the Indian child's tribe or tribes;
 - c. Other Indian families; or
 - d. A non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child's tribe or tribes.
2. Foster Care, Preadoptive or Voluntary Placement: Indian children being placed in a foster care. The CFS Specialist will utilize a two-tiered review in establishing the placement preferences for children in need of a placement in foster care.
 - a. The CFS Specialist will conduct an assessment of the following in assessing the placement preferences in securing a foster care placement:
 - 1) The least restrictive setting which most approximates a family;
 - 2) A placement setting that meets the Indian child's special needs (if any); and
 - 3) Placement is within reasonable proximity to his or her home.
 - b. The CFS Specialist will follow the placement preferences listed below unless the Indian child's primary tribe has a different order of preference. When the tribe has identified their own placement preferences, the CFS Specialist will contact DHHS Legal for consultation. When appropriate, the preference of the Indian child or parent will be considered.

Good cause must be established to deviate from the placement preferences.

 - 1) A member of the Indian child's extended family regardless of heritage;
 - 2) Other members of the Indian child's tribe or tribes;
 - 3) A foster home, licensed, approved or specified by the Indian child's tribe or tribes, whether on or off the reservation;
 - 4) An Indian foster home licensed or approved by an authorized non-Indian licensing authority;
 - 5) A non- Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child's tribe or tribes;

- 6) An Indian facility or program for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs; or
- 7) A non-Indian facility or program for children approved by an Indian tribe.

GOOD CAUSE TO DEVIATE FROM THE PLACEMENT PREFERENCES

An Indian child may be placed in a placement outside of the placement preferences based on the following statutory guidelines:

1. The request of the biological parents or the Indian child when the Indian child is at least twelve (12) years of age;
2. The extraordinary physical or emotional needs of the Indian child as established by testimony of a qualified expert witness; or
3. The unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria.
4. Emergency removal from the home does not require a placement that complies with ICWA's order of preference for placement; however a placement change to one that complies with the placement preferences should be expedited.
5. The court may identify other situations that meet the definition of good cause.

The CFS Specialist must document specific efforts to follow placement preferences. The burden of establishing the existence of good cause to deviate from the placement preferences and order will be by clear and convincing evidence provided by CFS when CFS is making the recommendation of good cause to deviate from the placement preferences.

EMERGENCY REMOVAL OF AN INDIAN CHILD

Emergency removal from the home does not require a placement that complies with ICWA's order of preference for placement. The CFS Specialist will attempt to follow the placement preferences at all times, even at removal, but if the circumstances prevent following the placement preferences the child may be temporarily placed in another type of placement until a preferred placement can be located. No ICWA requirements prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but is temporarily located off the reservation. An emergency placement for an Indian child means that DCFS believes it is necessary in order to prevent imminent physical damage or harm to the child. The emergency removal or placement must terminate immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. The CFS Specialist must attempt to contact the child's tribe to determine if the child is a ward of the tribal court or resides on a reservation. The CFS Specialist must immediately contact the County Attorney and work with them to initiate a child custody proceeding, transfer the child to the jurisdiction of the appropriate Indian tribe or tribes, or return the child to the parent or Indian custodian.

RIGHTS OF THE PARENT OR INDIAN CUSTODIAN

1. Voluntary Cases (Non-Court or Alternative Response): When the CFS Specialist offers services through a non-court or alternative response case, the parent or Indian

custodian of the Indian child and the Indian child's tribe or tribes have a right to participate in, provide, or consult with the CFS Specialist regarding the provision of services. The CFS Specialist will provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family or unite the parent or Indian custodian with the Indian child until these efforts have proved unsuccessful.

The Tribe or Tribes have a right to be involved in a non-court or alternative response case regardless of the wishes of the parent(s).

2. Involuntary Cases (Court Involved): If a parent or Indian custodian appears in court without an attorney, the court must inform him/her that they have certain rights as follows:
 - a. The right to appointed counsel;
 - b. The right to request that the proceeding be transferred to the tribal court;
 - c. The right to object to transfer to the tribal court;
 - i. The Indian Custodian cannot object to a transfer but can request a transfer.
 - d. The right to request additional time to prepare for the proceeding; and
 - e. The right to intervene in the proceeding (if the parent or Indian custodian is not already a party).
3. The CFS Specialist must notify the tribe of DCFS involvement. The CFS Specialist must notify the tribe regardless of the parents request not to involve the tribe.

INTERVENTION

The child's tribe, parents and Indian custodian have a right to intervene in the state court proceedings at any point in the proceeding regardless of whether the intervening party is represented by legal counsel.

If the Indian child is eligible for membership or enrolled in multiple Indian tribes and more than one Indian tribe intervenes in a state court proceeding, the Indian child's primary tribe shall be identified. See section on Primary Tribe Determination.

Intervention allows a tribe, parent or Indian custodian to become a party in the proceeding and to have all of the rights of a party, including reviewing the court's file, presenting evidence, calling witnesses and cross examining witnesses.

The CFS Specialist must contact the child's tribe and work with the tribe in providing services to the family.

TRANSFER FROM STATE COURT TO THE TRIBAL COURT

The parent(s), the Indian custodian or the child's tribe may, either orally or in writing, request the court to transfer the child's custody proceedings to the tribal court of the child's tribe. If the request is made orally it will be reduced to writing by the court and made a part of the record.

When the CFS Specialist becomes aware that a motion has been made to transfer juvenile court proceedings to a Tribal Court or any parent, Indian custodian or tribe has indicated that transfer may be requested, the CFS Specialist will contact the DCFS ICWA Program Specialist and DHHS Legal.

When a determination is made to transfer the case from State Court to Tribal Court, the CFS Specialist will copy the CFS record, including documents created and stored in N-FOCUS, excluding privileged or confidential information. The CFS Specialist will send the information to the ICWA Specialist for the child's tribe.

DETERMINATION OF GOOD CAUSE TO THE CONTRARY NOT TO TRANSFER A CASE TO THE TRIBAL COURT

Good cause not to transfer the proceedings to tribal court exist if:

1. The Indian child's tribe does not have a tribal court as defined by the ICWA to which the case can be transferred;
2. The proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition promptly after receiving notice of the hearing;
3. The child is over 12 years of age and objects to the transfer;
4. The evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses; or

EVIDENCE

The standard of evidence in ICWA cases is different from that of non-ICWA cases. To place a child in foster care, the Department must show, by clear and convincing evidence and through testimony of a qualified expert witness that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical harm to the child.

To terminate parental rights, there must be evidence beyond a reasonable doubt, including qualified expert witness testimony, that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical harm to the child.

NONCOMPLIANCE

ICWA allows a parent, Indian custodian or tribe to ask a court to invalidate all prior proceedings if the proceedings do not comply with specific provisions of ICWA. The ICWA provisions that allow a party to ask a court to invalidate prior proceedings include: jurisdiction; transfer; intervention; full faith and credit to the public acts, records and judicial proceedings of Indian tribes; notice; time; appointment of counsel; examination of reports or other documents; active efforts to provide remedial services and rehabilitative programs; burdens of proof; failure to provide the testimony of an expert witness; and consent. ICWA allows a court to invalidate foster care and termination of parental rights proceedings. In addition, ICWA allows a court to vacate an adoption if consent to the adoption was based upon fraud or duress; a court has the power to vacate adoptions that have been in place for up to two years, and possibly longer if state law allows.

Compliance with ICWA is necessary to ensure permanency for Indian children.

RELINQUISHMENT OR TERMINATION OF PARENTAL RIGHTS

1. **Consent to Voluntary Placement/Adoption:** When a parent or Indian custodian voluntarily consents to foster care placement (including guardianship) or relinquishment or termination of parental rights, the consent must be in writing and executed before a judge. A notarized consent is insufficient. The judge must certify that the terms and consequences of the consent were fully explained in detail, and that the parent or Indian custodian understood the consent. Any consent taken prior to birth or within 10 days after the birth of an Indian child is not valid.
2. **Information to the Court:** Prior to any voluntary relinquishment or termination of parental rights proceedings in which DCFS is or was providing assistance to a parent or Indian custodian, DCFS will submit the following information, in writing, to the court if it has not previously been provided. The CFS Specialist will work with the DCFS Program Specialist and coordinate with DHHS Legal in providing this information.
 - a. The jurisdictional authority of the court in the proceeding;
 - b. The date of the Indian child's birth and the date of any voluntary consent to relinquishment or termination;
 - c. The age of the Indian child at the time voluntary consent was given;
 - d. The date the parent appeared in court and was informed by the judge of the terms and consequences of any voluntary consent to relinquishment or termination;
 - e. The parent fully understood the explanation of such terms and consequences in English or, when necessary, the explanation was interpreted into a language that the parent understood and the parent fully understood the explanation of such terms and consequences in the language into which such terms and consequences were translated;
 - f. The name and address of any prospective adoptive parent whose identity is known to the consenting parent;
 - g. The promises, if any, made to the parent, as a condition of the parent's consent, including promises regarding the tribal affiliation or health, ethnic, religious, economic, or other personal characteristics of any adoptive family with which the child would be placed; and
 - h. The details, if any, of an enforceable communication or contact agreement authorized by Neb. Rev. Statute 43-162.
3. **Withdrawal of a Consent:** At any time a parent or Indian custodian may withdraw consent to a foster care placement (including guardianships) and the child must be returned to the parent or the state must begin involuntary proceedings.
4. **Consent to Termination of Parental Rights:** A parent or Indian custodian may withdraw consent to termination of parental rights or adoptions before the entry of a final decree of adoption, and the child must be returned to the parent or the state must begin involuntary proceedings.

VACATED ADOPTION; RELINQUISHMENT OF ADOPTIVE PARENTS

When an adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights, the biological parent or

prior Indian custodian may petition the court for return of custody. In situations when Indian children are placed in the care and custody of the Department for out-of-home placement because of a vacated adoption or relinquishment, the CFS Specialist may contact the biological parents and prior Indian custodian to determine if they are now a placement option or to secure placement of the child based on the ICWA placement preferences.

The CFS Specialist will submit an ICWA Notice to the Tribe in this situation.